

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
General Communications, Inc. Request)	WT Docket No. 16-209
for Waiver of Certain Requirements in)	
the upper 6 GHz Bands)	
)	
)	

To: The Commission

***Ex Parte* Comments of EIBASS**

Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (EIBASS) hereby respectfully submits its *ex parte* comments in the above-captioned public notice relating to a waiver request by General Communication, Inc. (GCI) for point-to-point microwave stations in the "upper 6 GHz bands" in Alaska. These *ex parte* comments are in response to an August 22, 2016, *ex parte* filing by GCI.

I. GCI Does Not Address, Nor Does It Refute, the Existence of a 7 GHz TV Pickup Station that Includes a State of Alaska Operational Area, or Acknowledge Its Failure to Request Waiver of the Rule Requiring Protection of TV Pickup Operational Areas

1. In its *ex parte* comments GCI does not address, let alone refute, the existence of 7 GHz TV Pickup station WQRU351, which includes all of Alaska except for areas within 56.3 km (35 miles) of the Canadian border. Because Section 101.147(a)(34) precludes a Part 101 fixed service (FS) microwave station from having a path that intersects any portion of the operational area of a TV Pickup station in the same band, and since GCI failed to request waiver of that rule (and, correspondently, the FCC public notice requesting comment on the GCI waiver request did not list that rule section as a candidate for waiver), the GCI waiver request is fatally flawed on its face. That is, even if the waivers requested by GCI were to be granted, it would still be prohibited from building its proposed microwave links using frequencies in the 6,875–7,125 TV Broadcast Auxiliary Service (BAS) band.

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II. GCI Has Submitted No Showing by a FCC-Recognized Commercial Microwave Frequency Coordinator Showing that Existing Part 101 Frequencies Are Not Available to Accomplish Its Needs Without a Rule Waiver

2. EIBASS notes that GCI has failed to submit any third-party documentation from an FCC-recognized commercial microwave frequency coordinator (CMFC)¹ demonstrating that there is no standard (*i.e.*, no waiver required) spectrum available to accomplish its desired interconnect. The Commission should require GCI to undertake such a study by a CMFC before granting any waiver, (1) in the event GCI again modifies its waiver request to include Section 101.147(a)(34), and (2) a new public notice is given of that fact, to ensure that all interested parties are alerted to the expanded scope of the requested waiver.

III. GCI *Ex Parte* Filing Is Contradictory

3. GCI claims that an emergency event that could turn portions of Alaska from a no use or low used backwater (Category III or IV) electronic news gathering (ENG) area² to a heavily used Category I or II ENG area is so unlikely as to not be a concern, and ignored. Yet at page 2 of its *ex parte* filing GCI includes as justification for its waiver request "...to support public safety and to respond to emergency situations in these areas." GCI cannot have it both ways: They cannot claim on the one hand that there will never be major news events such as the 1964 Good Friday earthquake, the 1967 Fairbanks floods, the 1989 Exxon Valdez oil spill or the 2004 Alaska wildfires that could trigger intensive use of 7 GHz TV BAS spectrum as well as 2, 6.5 and 13 GHz TV BAS spectrum, yet on the other hand claim that emergency situations are so common as to justify a microwave interconnect that can allegedly only be constructed based on multiple rule waivers.

¹ See http://wireless.fcc.gov/services/index.htm?job=licensing_1&id=microwave .

² As categorized by SBE, and as adopted in the July 3, 2002, ET Docket 95-18 Second R&O, the four categories of TV electronic news gathering (ENG) use are:

Category I: "Los Angeles" or "LA." Extremely heavy use, mostly split channel. There is lots of itinerant use and channel borrowing and sharing; even so, seven channels aren't enough.

Category II: "Metro." Spectrum is heavily used, especially during the news hours. There is some split channel use, not a lot, and some itinerant use. There is regular channel borrowing and sharing.

Category III: "Light." There is some electronic news gathering (ENG), some fixed link, maybe even some channels mostly vacant most of the time. Typically, a small-market, low-competition situation.

Category IV: "Rural." ENG is unheard of, the use is for fixed, long-haul relays to small-market TV stations, to TV translator stations, and to cable television headends. In some areas not all channels are even used.

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IV. Prior FCC Enforcement Action Against GCI

4. EIBASS notes that in February 2015 GCI received a \$20,000 forfeiture for a tower lighting violation³, a \$600,000 forfeiture for additional tower lighting violations in October 2015⁴, and in July 2016 a \$2.4 million fine for 911 outages⁵. EIBASS questions whether GCI should be awarded a rule waiver that will benefit its operations in light of such recent history that on their face demonstrates both a lack of commitment to its 911 responsibility to the public, and a lack of oversight to assure its tower structures do not represent hazards to air navigation.

³ FCC DA 15-137, dated February 3, 2015; FCC Enforcement Bureau case EB-FIELDWR12-00004576.

⁴ FCC DA-15-1179A1.

⁵ "GCI To Pay \$2.4 Million in FCC Settlement Over 911 Outages", July 6, 2016, Alaska Dispatch News.

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V. Summary

5. The GCI waiver request continues to be fatally flawed because even if granted it would still not be possible for GCI to use 7 GHz TV BAS band frequencies because of the existence of a TV Pickup station operational area for most of Alaska. Grant of the waiver would create a precedent that violates the heart of the ET Docket 10-153 "BAS Flexibility" rulemaking, which allowed Part 101 FS stations access to 7 and 13 GHz TV BAS spectrum, but only with safeguards. Now GCI wants to have those safeguards waived, to its benefit. And already two other parties, Alaska Rural Coalition (ARA) and AT&T Services, Inc. (AT&T) have indicated they would expect "me too" rule waivers. The Commission should not grant any waiver of Section 101.147(a)(34), and TV BAS channels B5 and B6 should remain reserved for TV BAS only, and not subject to sharing with Part 101 FS stations. EIBASS has a long and documented track record of supporting compatible sharing with entities that play by the rules. Here we have an applicant that not only ignores rules the FCC has in place, but also wants to make up its own rules.

Respectfully submitted,

/s/ Dane E. Ericksen, P.E., CSRTE, 8-VSB, CBNT
EIBASS Co-Chair
Consultant to Hammett & Edison, Inc.
Sonoma, CA

/s/ Richard A. Rudman, CPBE
EIBASS Co-Chair
Remote Possibilities
Santa Paula, CA

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EIBASS
18755 Park Tree Lane
Sonoma, CA 94128
707/996-5200
dericksen@h-e.com